

**Supplemental Final Order Denying Refund: 03-20180229R
Withholding Tax
For Tax Period Ending February 29, 2016**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Supplemental Final Order Denying Refund.

HOLDING

Business was not entitled to refund of collection fees because it did not establish that either it or its representative timely responded to Department proposed assessments and demand notices.

ISSUE

I. Tax Administration—Collection Fees.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-8-2; IC § 6-8.1-8-4; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer protests the denial of a claim for refund.

STATEMENT OF FACTS

Taxpayer received a warrant issued on April 27, 2016 for collection from the Indiana Department of Revenue's ("Department") third-party collection agency ("Agency") after Taxpayer did not respond to the Department's Proposed Assessment or the Demand Notice concerning a discrepancy over withholding tax plus penalty and interest. Since Taxpayer did not respond to the Department's notices, the tax liability eventually advanced to the warrant stage and the Agency successfully obtained payment from Taxpayer.

Taxpayer filed an amended return listing zero in withholding tax due for the period ending on February 29, 2016. Taxpayer's reasoning was that it had no Indiana employees upon which withholding was required for that period. The Department granted a refund of the withholding tax which had been collected via the warrant. Taxpayer then filed a Claim for Refund requesting a refund of collection fees that was paid as part of the warrant amount. The Department responded to the refund claim by denying refund of the collection fees. Taxpayer then filed a protest requesting refund of the collection fees. An administrative hearing was held, and a Final Order Denying Refund was issued. Taxpayer requested a rehearing based on its position that it had additional facts which it believed could change the outcome of the protest. The Department granted the rehearing and this Supplemental Final Order Denying Refund results. Further facts will be provided as required.

I. Tax Administration—Collection Fees.

DISCUSSION

Taxpayer protests the Department's initial refund denial of collection fees and subsequent Final Order Denying Refund. Taxpayer maintains that it did not have any Indiana employees during the tax period ending on February 29, 2016 upon which withholding taxes should have been imposed. The Department reviewed Taxpayer's circumstances and agreed to refund the withholding tax, penalty, and interest. The issue is whether the denial of refund of collection fees was appropriate.

The Department notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

If the Department reasonably believes that a taxpayer has not reported the proper amount of tax due, the Department shall propose an assessment of unpaid tax based on the best information available to the

Department. IC § 6-8.1-5-1(b). The amount of the proposed assessment "is considered a tax payment not made by the due date" and is subject to penalties and interest. *Id.* Notice of the proposed assessment shall be sent to the taxpayer stating that it has sixty (60) days in which to pay the assessment or file a written protest. IC § 6-8.1-5-1(b) and (d). If the taxpayer does not pay the proposed assessment or file a written protest in the sixty (60) day period "[t]he department shall demand payment, as provided in [IC 6-8.1-8-2\(a\)](#), of any part of the proposed tax assessment, interest, and penalties" IC § 6-8.1-5-1(j). In these situations, the Department "shall make the demand for payment in the manner provided in [IC 6-8.1-8-2](#)." IC § 6-8.1-5-1(k).

IC § 6-8.1-8-2 provides that the Department must issue a demand notice for payment which grants the taxpayer a ten (10) day period of time in which to "either pay the amount demanded or show reasonable cause for not paying the amount demanded." IC § 6-8.1-8-2(a). If a taxpayer "does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the ten (10) day period, the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs," and other fees. IC § 6-8.1-8-2(b). When it has issued a tax warrant, the Department may contract with a collection agency to collect delinquent tax plus interest, penalties, collection fees, and other fees and costs. IC § 6-8.1-8-4(a). Additionally, "a collection fee of ten percent (10 percent) of the unpaid tax is added to the total amount due." *Id.* When a tax warrant is filed, "the total amount of the tax warrant becomes a judgment against the person owing the tax." IC § 6-8.1-8-2(e).

In this case, neither Taxpayer nor its authorized representative ("Representative") responded to the Department's proposed assessment notice or the Department's demand notice. IC § 6-8.1-8-2(b) authorizes a collection fee of ten percent whenever the Department issues a tax warrant. In addition, IC § 6-8.1-8-4(a) and (b) authorize fees for collection agencies acting on the Department's behalf. The collection fees in question are the result of an assessment which advanced to a tax warrant stage. The collection fees are a statutorily allowed amount for collection on a tax warrant, even if the liability is later shown to be in error. Further, Taxpayer has not demonstrated that the Department acted improperly at any stage of the collections process and the Department does not refund collection fees unless the Taxpayer can prove that the Department was somehow at fault. Taxpayer failed to do so in this case.

Representative protests that there were multiple miscommunications between its client and a related company which resulted in confusion regarding Taxpayer's Indiana filing duties. This in turn resulted in a delay in Taxpayer contacting Representative until after the collection procedures had occurred. Representative believes that, since it never had an opportunity to dispute the original proposed assessments, the imposition of collection fees is inappropriate and that those collection fees should be refunded to Taxpayer.

The Department does not agree with Representative's position. In this case the Department mailed multiple notices to the address on Taxpayer's account. Neither Taxpayer nor Representative responded to those notices. The Department followed statutory procedure each step of the way. Whether it was Taxpayer or Representative, no one contacted the Department until after the collection fees had been incurred. The collection fees were not retained by the Department. Rather, the collection fees arose wholly due to Taxpayer's failure to respond in a timely manner to the Department's notices. The Department did refund the base tax once it received a response. However, in the absence of Department error, the Department does not agree that it should bear the cost of the properly executed statutory collection procedures. Taxpayer's failure to contact Representative in a timely manner does not alter this conclusion.

FINDING

Taxpayer's protest is denied.

March 29, 2018

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